

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: D. KWON
Serial No: 09/963,638
Filed: September 27, 2001
Title: METHODS AND APPARATUS FOR DETERMINING OPTICAL
CONSTANTS OF SEMICONDUCTORS AND DIELECTRICS
WITH INTERBAND STATES
Group: 2877
Examiner: Gordon J. STOCK, Jr.

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 20, 2003

Sir:

Restriction was required in the Office Action mailed November 18, 2003 in the above-identified application. It was alleged in the Office Action that the invention of groups I and II are distinct, each from the other because they are unrelated and independent from each other as set forth on page 2 of the Office Action. This requirement for restriction is hereby traversed and reconsideration thereof is respectfully requested.

The invention of group I to which claims 1-12, 24 and 25 are drawn is a method of calculating at least one physical parameter and an apparatus comprising an optical instrument for measuring an optical property of a film. The invention of group II, to which claims 13-23 are drawn, is for a method of material engineering for producing a film and a process for producing a film as well as an apparatus for producing a film having at least one desired physical

parameter. It is respectfully submitted that the inventions of groups I and II are related, not independent. In support of this relatedness, it is noted that the method of calculating at least one physical parameter of a film of group I to which claims 1-12 are directed and the method of group II of material engineering for producing a film having at least one desired optical property by a process which alters interband states in the film to affect the property as recited in claims 13-18, are related as a method of calculating at least one physical parameter of a film, and a method of using the method of calculating for material engineering for producing a film. That is, they are related as subcombination and combination.

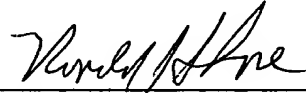
The Manual of Patent Examining Procedure, MPEP §806.05(c) states that in order to establish that combination and subcombination inventions are distinct, two-way distinctness must be demonstrated. This has not been done in the outstanding Office Action. Accordingly, reconsideration and withdrawal of the requirement for restriction is requested.

In order to be fully responsive to the outstanding Office Action, Applicant provisionally elects for further prosecution on the merits the invention of group I to which claims 1-12, 24 and 25 are directed. An early action on the merits of all of the claims, or at least the claims of the elected invention in the event the restriction requirement is not withdrawn, is requested.

A Petition for Extension of Time has been filed concurrently with this Letter to permit the timely filing of the Letter within the first month extension of time from the end of a shortened statutory period set for response in the Office Action.

To the extent necessary, Applicants petition for an extension of time under 37 CFR §1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (Case No. 178.39931X00) and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ronald J. Shore", is written over a horizontal line.

Ronald J. Shore
Registration No. 28,577
ANTONELLI, TERRY, STOUT & KRAUS, LLP

RJS/kmh

Attachments